IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

MONDAY, THE TWENTY SEVENTH DAY OF DECEMBER
TWO THOUSAND AND FOUR

PRESENT

THE HON'BLE MS JUSTICE G.ROHINI

WRIT PETITION NO : 18864 of 2004

Between:

1. M.A.Haseeb Khan, S/o Rafeek Khan,
   R/o Narayan Khed Mandal, Narayankhed
2. M.A.Rehman, S/o Hazee Akbar Ali,
   R/o Narayankhed Mandal, Narayankhed
3. M.Datta Reddy, S/o Gunda Reddy,
   R/o Bellapur, Manoor mandal
4. G.Narayana, S/o Bakkanna,
   R/o Boorugupalli, Peddashankarampet Mandal

... PETITIONERS

AND

1. The Commissioner and Director of Sugars, Cane Commissioner,
Shakkar Bhavan, Basheerbagh, Hyderabad
2. Asst.Cane Commissioner, Bodhan, Nizamabad District

...RESPONDENTS

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court may be pleased to issue a writ, or Order or direction more particularly in the nature of Writ of Mandamus declaring the action of the respondents in not declaring that the Sugar Cane Farmers/petitioners are free to sell cane grown by them to the factory of their choice till the proposed factory at Magi Village, Nizamsagar Mandal, Nizamabad District starts functioning as unconstitutional and consequently direct the respondents to facilitate the farmers to sell the sugar cane to the factory of their choice.

Counsel for the Petitioner: MR.K.S.MURTHY

Counsel for the Respondents: GP FOR INDUSTRIES & COMMERCE

The Court made the following:

THE HON'BLE MS. JUSTICE G. ROHINI

W.P.No.18864 of 2004

ORDER:

The petitioners claim to have been cultivating sugar cane for the last 10 to 12 years in their lands situated in Narayankhed, Manoor, Peddashankarampet Mandal in Medak District. It is stated that they have been supplying the cane to various factories as per the zone declared by the Director of Sugar and Cane Commissioner-first respondent herein from time to time. In the year 2003 by proceedings dated

24-02-2003 issued by the first respondent the petitioners and other villagers of the locality were informed that their respective mandals were shown as part of the zone attached to the proposed factory of M/s. G.S.R. Sugars at Magi Village. Since admittedly the said G.S.R. Sugars was not existing by that time and since proceedings dated 24-02-2003 were silent about any other factory to which the petitioners and other villagers have to supply the sugar cane, the petitioners and other villagers who fall within the zone of M/s. G.S.R. Sugar

Industries sold the cane to other factories nearby. The officers did not raise any objection to the same. However, during the current season some of the employees claiming themselves to be under the control of first respondent have been asking the petitioners to sell the cane only to the factory at Kamareddy, which is more than 100 km., from the villages of the petitioners. As a matter of fact, there is another factory at Zaheerabad, which is nearer to the villages of the petitioners and there is also another factory at Sangareddy nearby. However, the subordinates of the respondents are forcing the petitioners to sell the sugarcane grown by the petitioners to a particular factory. Aggrieved by the said action, this writ petition is filed seeking a declaration that the action of the respondent in not declaring that the petitioners are free to sell the cane grown by them to the factory of their choice, till the proposed factory at Magi Village, Nizamsagar Mandal, starts functioning as arbitrary, illegal and unconstitutional.

On behalf of the respondents the Assistant Cane Commissioner, Bodhan, filed a counter affidavit stating that M/s. G.S.R. Sugars Limited which was formerly known as M/s. Indira Sugars and Industries Limited was proposed to be setup at Magi Village, Nizamsagar Mandal, Nizamabad District, for which a zone has been declared by the first respondent vide proceedings dated 19-09-2001 for five seasons from 2001-02 to 2005-06 subject to the condition that crushing should commence in the year 2003-04 positively, barring which it shall be deemed that zone stands cancelled. Subsequently, on a representation made by M/s. G.S.R. Sugars Limited, the first respondent by proceedings dated 02-08-2003 while renewing the zone of M/s. G.S.R. Sugars imposed condition that they should establish a factory before December, 2005, failing which a review shall be taken in January, 2006, in the interest of cane growers. In pursuance thereof, M/s. G.S.R. Sugars purchased 80 acres of land at Magi Village for sugar factory and developed 5,300 acres cane area and they have also supplied seed cane, chemical fertilizers on loan basis for development of cane production. It is further stated that the M/s. G.S.R. Sugars Private Limited has taken steps for development of sugarcane in five mandals i.e., Kalher, Kangti, Narayankhed, Manoor and Shankarampet of Medak District under tie up with the banks by arranging crop loans and extending necessary technical assistance and field staff and they have already entered into an agreement with

M/s. Gayatri Sugars Limited which is their sister concern on 27-03-2003 for supplying of sugar cane for crushing till the erection of new sugar factory in the interest of cane growers. The said action of M/s. G.S.R. Sugars in entering into an agreement with Gayatri Sugars Limited was ratified by the first respondent by proceedings dated 02-08-2003. Hence the cane grown in the zone of M/s. G.S.R. Sugars has to be crushed at M/s. Gayatri Sugars till the erection is completed. The staff members of M/s. G.S.R. Sugars are working in their zone area and motivating the cane suppliers to supply the cane to M/s. Gayatri Sugars for which transport subsidy is provided. It is also stated that once the zone is declared for a particular sugar factory, the cane growers cannot supply the cane to any factory other than the zone area sugar factory, unless and until valid permission from the Cane Commissioner as per sub Section 2 of Section 16 of A.P. Sugar Cane (Regulation of Supply and Purchase) Act, 1961, (for short "the Act"). While denying the allegation of the petitioners that the subordinates of the respondents are asking the petitioners to sell their sugar cane to a certain sugar factory, it is stated that during the crushing period movement of cane loaded vehicles will be checked by the officers of the department as a routine duty, but the cane growers are not insisted to supply their cane to any particular sugar factory.

I have heard the learned counsel for the petitioners and learned Government Pleader appearing for the respondents and perused the material on record.

At the out set, it is to be noted that the Act provides for the regulation of supply and purchase of sugar cane required for use in sugar factories and kandasari units and for matters connected therewith in detail. Under Section 15 of the Act the Cane Commissioner is empowered to declare any area as the factory zone for the purposes of supply of cane to the factory during five crushing seasons immediately following the date of the order. The Cane Commissioner has also been empowered either to cancel such order or to alter the boundaries of the area so declared. Under Section 16 of the Act it is made clear that where an area has been declared as the factory zone for a factory, the occupier of factory shall purchase such quantity of cane grown in that area and offer for sale to the factory as may be determined by the Cane Commissioner in

accordance with the provisions of the schedule to the Act. Sub Section 2 of Section 16 further provides that no cane grower in a factory zone shall sell or supply cane to any factory or other person otherwise than in accordance with the provisions of the schedule. Similarly, under Sub Section (2-A) no person other than the occupier of a factory for which a factory zone has been declared shall purchase cane in the factory zone otherwise than in accordance with the provisions of the schedule. Any person who contrivance the provisions of either sub Sections (2) or (2-A) of Section 16 is liable to be punished in terms of Section 23 of the Act.

As can be seen from the material on record the Mandals where the lands belonging to the petitioners are situated were initially included in the factory zone of a sugar factory by name M/s. Manjeera Sugars Limited as per the allotment made by the first respondent by proceedings dated 28-10-1994. However, the said sugar factory, which was proposed to be established at Bichkonda was not erected at all and even the zone period expired by 1998-99 season. Thereafter M/s. Indira Sugars and Industries proposed to establish a new sugar factory at Magi Village, Nizamsagar Mandal, Nizamabad District and made a request for inclusion in their zone of all the mandals which were earlier allotted to M/s. Manjeera Sugars. Having considered the said request, the first respondent, in exercise of the powers conferred under Section 15 of the Act, issued a notification dated 19-09-2004 allotting a part of the zone of M/s. Manjeera Sugars Limited i.e., seven mandals, situated in Nizamabad District, to M/s. Indira Sugars and Industries Limited which is now known as M/s. G.S.R. Sugars Limited duly stipulating certain conditions on purchase of land, cane development, indent for machinery, etc. Thereafter, on a further request made by M/s. G.S.R. Sugars Private Limited the first respondent issued notification dated 24-02-2003 including the second part zone of erstwhile Manjeera Sugars i.e., five mandals, situated at Medak District in the zone area of M/s. G.S.R. Sugars up to 2005-06 season with a condition that they should establish the factory before December, 2005 based on the fulfillment of certain conditions like purchase of land at Magi Village for factory site and development of sugarcane in the allotted zone area and indent for machinery to meet sufficient cane for 2,500 TCB.

Admittedly, the lands belonging to the petitioners herein which are situated in Medak District have been included in the factory zone of M/s. G.S.R. Sugars Private Limited under the notification dated 24-02-2003 issued by the first respondent. There cannot be any dispute about the legal position as per the provisions of the A.P. Sugarcane (Regulation of Supply and Purchase) Act, 1961, that the petitioners are bound to sell or supply the cane grown by them only to M/s. G.S.R. Sugars Private Limited. However, the only grievance of the petitioners in this writ petition is that since M/s. G.S.R. Sugars Private Limited failed to erect the sugar factory at Magi so far, they are unable to sell the sugarcane grown by them to the said factory and at the same time, they are being prevented by the officials of the respondents to sell the sugarcane to any other sugar factory nearby. In the circumstances, the petitioners seek a declaration that they are entitled to sell the sugarcane to the factory of their choice.

Though the respondents have not disputed the fact that M/s. G.S.R. Sugars has not yet erected the sugar factory at Magi Village, the only plea raised by them is that the said M/s. G.S.R. Sugars Private Limited entered into an agreement with M/s. Gayatri Sugars Limited which is their sister concern for supply of sugarcane for crushing till the erection of new sugar factory at Magi Village and that the said action of the M/s. G.S.R. Sugars has been ratified by the first respondent vide proceedings dated 02-08-2003.

In the circumstances, the learned Government Pleader submits that since it is necessary to implement the provisions of the Sugar Cane Regulation Act to avoid conflicts among the sugar factories and also to protect the interest of the villagers, the petitioners may be directed to supply their cane to M/s. Gayatri Sugars Limited which is a sister concern of M/s. G.S.R. Sugars.

It is true that as per the provisions of the Act once the zone is declared

for a particular sugar factory the cane growers are bound to supply their cane to the said factory and supply of cane to any factory other than the factory notified is an offence under provisions of the Act. However, when admittedly, the factory, which has been declared as factory zone under the notification issued under Section 15 of the Act is not in existence, I am of the view that the respondents are not entitled to insist that cane growers shall supply the cane to any other factory, in the absence of any such order in terms of Section 16 of the Act. It is relevant to note that under paragraph 8 of the schedule to the Act, it is always open to the Cane Commissioner or any officer authorized by him to grant permission for the purchase of cane grown in a factory zone by any person or factory other than the factory for which such zone has been declared and for the sale or supply of cane grown in a factory zone to any person or factory other than the factory for which such zone has been declared. If that be so, when admittedly under the notifications dated 24-02-2003 and 02-08-2003 the first respondent granted time to G.S.R. Sugars Private Limited to establish the factory at Magi Village up to December, 2005 and since admittedly the said notifications are valid up to the year 2005-06, nothing prevented first respondent, in exercise of the powers conferred under Section 16 of the Act read paragraph 8 of the schedule, to issue appropriate orders permitting the petitioners and other cane growers situated in the factory zone of M/s. G.S.R. Sugars for the sale of the cane grown by them to any other factory. Without issuing such orders, by merely ratifying the agreement entered into between M/s. G.S.R. Sugars with their sister concern M/s. Gayatri Sugars Limited, the respondents cannot insist upon the petitioners to supply the cane grown by them to M/s. Gayatri Sugars Limited.

In the circumstances, though a mandamus cannot be issued declaring that the petitioners are entitled to sell the sugarcane to the factory of their choice, which would be contrary to the provisions of the Act, I deem it appropriate to dispose of the writ petition with a direction to the first respondent to issue appropriate orders for sale/supply of the sugarcane grown by the petitioners in terms of the Act, within a period of four weeks from the date of receipt of a copy of this order. Till such time the respondents are directed not to insist that the petitioners shall supply the cane grown by them either to M/s. Gayatri Sugars

or to any other sugar factory and not to take any coercive steps against them for the violation, if any, of sub Section 2 of Section 16 of the Act.

The writ petition is accordingly disposed of. No order as to costs.

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G. ROHINI, J

Dated: 27-12-2004

LSK

To

1. The Commissioner and Director of Sugars,

Cane Commissioner, Shakkar Bhava,

Basheerbagh, Hyderabad.

2. Assistant Cant Commissioner,

Bodhan, Nizamabad District.

3. Two C.C. to the Government Pleader for Industries and Commerce,

High Court Buildings, Hyderabad. (O.U.T.)

4. Two C.D. copies.